

**THE VIRGINIA BOARD OF MEDICINE  
MINUTES  
OCTOBER 10, 2002**

The Virginia Board of Medicine met on October 10, 2002, at 8:00 a.m., at the Department of Health Professions ("DHP"), 6606 West Broad Street, Richmond, Virginia. Harry C. Beaver, MD, President, called the meeting to order. Dr. Beaver declared a quorum.

**MEMBERS PRESENT:**

Harry C. Beaver, MD, President  
J. Kirkwood Allen, Vice President  
Diane Reynolds-Cane, MD, Secretary/Treasurer  
James F. Allen, MD  
Robert J. Bettini, MD  
Carol Comstock, RN, Citizen Member  
Malcolm L. Cothran, Jr., MD  
Cheryl Jordan, MD  
Thomas B. Leecost, DPM  
Joseph A. Leming, MD  
Gary P. Miller, MD  
Sue Ellen B. Rocovich, DO  
Cedric B. Rucker, Citizen Member  
Clarke Russ, MD  
Rev. LaVert Taylor, Citizen Member  
Kenneth J. Walker, MD  
Jerry R. Willis, DC

**MEMBERS ABSENT:**

Robert P. Nirschl, MD

**STAFF PRESENT:**

William L. Harp, MD, Executive Director  
Ola Powers, Deputy Executive Director, Licensure  
Karen Perrine, Deputy Executive Director, Discipline  
Kate Nosbisch, Deputy Executive Director, Physician Profile  
Robert Nebiker, Director, DHP  
Elaine Yeatts, DHP Senior Regulatory Analyst  
Gail Jaspen, Deputy Director  
Deborah A. Ordiway, Recording Secretary

**OTHERS PRESENT:**

Roscoe Roberts, Assistant Attorney General

**GUESTS PRESENT:**

Patricia D. Cooper, OT, vice-chair, Advisory Board on Occupational Therapy; David Pawlowski, chair, Advisory Board on Athletic Training; Jody Forman, L.Ac., chair, Advisory Board on Acupuncture; Robert McCombs, Eastern Virginia Medical School; Bruce Dubin, DO, JD, Associate Dean of the Edward Via Virginia School of Osteopathic Medicine; Jolynn Hamelman, Virginia Society for Respiratory Care; Susan Ward, Virginia Hospital Association; Claudette Dalton, MD, UVA School of Medicine; Bill Ward, former

chair of the Advisory Board on Respiratory Care; Warren Koontz, MD; Donna Whitney, Intervention Program Manager; Arnold Beresh, DPM; Neal Kauder; Paul Mazmanian, Ph.D., Medical College of Virginia; Joel J. Silverman, MD, Medical College of Virginia; and Elinore McCance-Katz, MD, Medical College of Virginia

## **INTRODUCTION OF GUESTS**

Dr. Beaver welcomed the invited guests and other attendees.

## **ADOPTION OF AGENDA**

Dr. Harp suggested the agenda be amended to include the adoption of “Emergency Regulations for Office-Based Anesthesia” following the 11:00 a.m. public hearing for same.

Mr. Allen moved to adopt the amended agenda as proposed by Dr. Harp. The motion was seconded and carried unanimously.

## **PUBLIC COMMENT ON AGENDA ITEMS**

There was no public comment.

## **APPROVAL OF MINUTES OF JUNE 6, 2002**

Dr. Leming moved to approve the minutes of the Board, dated June 6, 2002. The motion was seconded and carried unanimously.

## **PRESENTATION OF PLAQUES TO FORMER BOARD AND ADVISORY BOARD MEMBERS**

An award plaque was presented to William Ward, RRT, for his tenure as a member and chair of the Advisory Board on Respiratory Care from July 1, 1998 to June 30, 2002.

Although not present at the meeting, an award plaque was awarded to Brian R. Wright, DPM, for serving on the Virginia Board of Medicine from July 1, 1998 to June 30, 2002; Richard M. Newton, MD, for serving on the Virginia Board of Medicine from July 1, 1998 to June 30, 2002; Floyd M. Herdrich, L.Ac., for serving on the Advisory Committee on Acupuncture from July 1, 1996 to June 30, 2002; Marie F. Steinmetz, MD, for serving on the Advisory Committee on Acupuncture from July 1, 2000 to June 30, 2002; James B. Butler-Arkow, L.Ac., for serving on the Advisory Committee on Acupuncture from July 1, 2001 to June 30, 2002; David S. Groopman, MD, for serving on the Advisory Committee on Acupuncture from July 1, 2001 to June 30, 2002 and C. Delp Givens, Jr., MD, for serving on the Advisory Board on Respiratory Care from July 1, 1998 to June 30, 2002.

## **REPORTS OF OFFICERS AND EXECUTIVE DIRECTOR**

### President – Harry C. Beaver, MD

Dr. Beaver announced that Dr. Dianne Reynolds-Cane had been appointed as the Board of Medicine representative to the Board of Health Professions.

### Vice President – J. Kirkwood Allen

No report.

### Executive Director

Dr. Harp deferred his report until later on the agenda.

### Secretary/Treasurer – Dianne L. Reynolds-Cane, MD

No report.

## **COMMITTEE REPORTS**

### Executive Committee - Dr. Beaver

Dr. Beaver moved to accept the minutes of the Executive Committee dated August 2, 2002. The motion was seconded and carried unanimously.

### Legislative Committee - Mr. Allen

Mr. Allen moved to accept the minutes of the Legislative Committee dated September 27, 2002. The motion was seconded and carried unanimously.

### Credentials Committee - Dr. Jordan

Mr. Rucker moved to accept the minutes of the Credentials Committee dated June 6, 2002 and August 2, 2002. The motion was seconded and carried unanimously.

### Advisory Board on Physician Assistants - Dr. Harp

There was no meeting of this Advisory Board as appointments for this board were made shortly before the meeting date.

### Advisory Board on Occupational Therapy – Barbara Gallagher, OT

Dr. Leming moved to accept the minutes of the Advisory Board on Occupational Therapy dated September 12, 2002. The motion was seconded and carried unanimously.

#### Advisory Board on Respiratory Care – Dr. Harp

There was no meeting of this Advisory Board as appointments for this board were made shortly before the meeting date.

#### Advisory Board on Acupuncture – Ms. Forman

Dr. Leming moved to accept the minutes of the Advisory Board on Acupuncture dated September 11, 2002. The motion was seconded and carried unanimously.

#### Advisory Board on Radiologic Technologists - Dr. Harp

There was no meeting of this Advisory Board, as the Governor has not yet made appointments.

#### Advisory Board on Athletic Training – David Pawlowski

Dr. Leming moved to accept the minutes of the Advisory Board on Athletic Training dated September 10, 2002. The motion was seconded and carried unanimously.

#### Committee of the Joint Boards of Medicine and Nursing - Dr. Bettini

There was no meeting for the Committee of the Joint Boards of Medicine and Nursing since the last board meeting in June.

### **OTHER REPORTS**

#### Board of Health Professions - Dr. Willis

There was no meeting for the Board of Health Professions since the last board meeting in June.

#### Assistant Attorney General – Roscoe Roberts, AAG

Mr. Roberts stated that Virginia has recovered \$12 million in fraudulent Medicaid payments. He also reported that Dr. Vinod Modi received a 37-month prison sentence and his wife Dr. Kailas Modi was placed under house arrest for two years and they were also ordered to make restitution payments to Medicaid in the amount of \$2 million.

Appeals involving Russell Carter, MD and Lester Banks, MD were noted.

Mr. Roberts stated that physician assistants practicing in the emergency department are required to have the physician supervisor in the facility.

#### Department of Health Professions – Mr. Nebiker

Mr. Nebiker announced that the Department of Health Professions is scheduled to move November 8-11, 2002 to their new location at 6603 West Broad Street.

Podiatry Report - Dr. Leecost

No report.

Chiropractic Report - Dr. Willis

No report.

**NEW BUSINESS**

Item 1: Sanctions Reference Study – Neal Kauder

Mr. Kauder gave a summary to date of the Sanctions Reference Study. Dentistry and Pharmacy are the next boards to be studied. He asked that Dr. Beaver appoint a small committee to help him interpret data. Dr. Beaver agreed to do so and requested that anyone who was interested to contact him.

Item 2: Podiatry Radiologic Technologist-Limited Course and Examination – Arnold Beresh, DPM

Dr. Willis moved to approve the podiatry radiologic technologist-limited course and examination proposed by Dr. Beresh. The motion was seconded and carried with Dr. Russ, Ms. Comstock and Dr. Reynolds-Cane abstaining.

Item 3: Chart on Status of Regulations – Ms. Yeatts

Contained in the agenda packet was a copy of the Board of Medicine's regulatory actions.

Item 4: Regulatory Actions – Ms. Yeatts

***Withdrawal of NOIRA – felony convictions on profile***

Ms. Yeatts stated that this Notice of Intent was published as a result of legislation passed in 2001, which mandated that felony convictions be on the practitioner information system, also known as the "profile." In the 2002 session of the General Assembly, Senate Bill 59 was passed which required the board to make a number of changes to the profile. Emergency regulations were adopted, and incorporated into that process was the inclusion of felony convictions.

Dr. Russ moved for the withdrawal of this NOIRA. The motion was seconded and carried unanimously.

***Adoption of Proposed Regulations – 18 VAC 85-20 Profile Changes***

Dr. Leming moved to adopt the proposed regulations. The motion was seconded and carried unanimously.

***Adoption of Proposed Regulations – 18 VAC 85-50 General Supervision/Volunteer Practice***

Ms. Yeatts suggested adding a sentence to the end of 18 VAC 85-50-101(A) which would read as follows: An assistant practicing in the emergency department shall be under the supervision of a physician present within the facility.

Dr. Russ moved to adopt the proposed regulations with the amendment adding the above sentence. The motion was seconded. Dr. Russ' motion failed as Dr. Leming's substitute motion carried.

Dr. Leming moved a substitute motion and moved that the proposed regulations be accepted without the addition of the above sentence from the laws and regulations. The motion was seconded and carried unanimously.

***Adoption of Proposed Regulations for Volunteer Practice***

Dr. Leming moved to adopt the proposed regulations for volunteer practice. The motion was seconded and carried unanimously.

***Adoption of Final Regulation 18 VAC 90-40 Prescriptive Authority***

Dr. Leming moved to adopt the final regulations. The motion was seconded and carried unanimously.

**Item 6: Update on HPIP RFP – Gail Jaspen**

Dr. Russ moved to approve the committee's choice of MCV/VCU as the new vendor for HPIP. The motion was seconded. Ms. Jaspen gave an overview of HPIP and stated that the basic structure of the program will not change. The motion carried unanimously.

**PUBLIC HEARING**

A public hearing was held at 11:00 a.m. on the proposed regulations for licensed acupuncturists, the regulations governing the practice of respiratory care practitioners and office-based anesthesia. Crane-Snead recorded the public hearing.

Dr. Leming moved to adopt the balance of the agenda as a consent calendar absent items to be abstracted for action. The motion was seconded. Dr. Leming then withdrew his motion.

#### Item 4: Regulatory Actions – Continued

##### ***Adoption of Proposed Emergency Regulations on Office-Based Anesthesia***

Dr. Allen moved to adopt the report and recommendation as submitted. The motion was seconded. Ms. Yeatts stated she has two amendments for consideration. To add the words “ensure that the licensed anesthesia provider” before the sentence in 18 VAC 85-20-320(B)(6). This sentence would then read “Ensure that the licensed anesthesia provider remains physically present or immediately available, as appropriate, for diagnosis, treatment and management of anesthesia-related complications or emergencies.”

The definitions for “Office-based” would read as follows: “Office-based means any setting other than (1) a licensed hospital as defined in § 32.1-123 of the Code of Virginia or state-operated hospitals and their associated contiguous clinics with immediate access to anesthesia services available within two minutes; or (2) a facility directly maintained or operated by the federal government.”

Dr. Leming moved the amended language to the original motion. The motion was seconded. Dr. Allen was in approval of changing the definition for office-based, but was not in favor of changing the language to 18 VAC 85-20-320(B)(6).

Dr. Leming moved for division of the recommended amendment.

The motion to change the definition of office-based carried, with Mr. Allen opposed.

The motion to change 18 VAC 85-20-320(B)(6) failed.

The motion to adopt the regulations as amended carried unanimously.

#### Item 5: Proposed Legislative Changes to Improve the Disciplinary System – Robert Nebiker

Dr. Russ moved to refer this matter to a called meeting of the Legislative Committee on November 15 for the purpose of “perfecting” this legislation and receiving comment from the public. The matter will then be referred to the Executive Committee meeting on December 13. The motion was seconded and carried unanimously.

##### ***Independent Authority***

Dr. Russ referred the issue of establishing the Board of Medicine as an independent authority to the Legislative Committee to “perfect” a recommendation to the Executive Committee. The motion was seconded and carried, with Mr. Allen opposed.

#### Item 7: COTA Study and Recommendation from Legislative Committee – Mr. Allen

Mr. Allen stated the Legislative Committee recommended that COTAs not be required to be licensed or certified.

Dr. Allen moved to accept the recommendation from the Legislative Committee. The motion was seconded and carried unanimously.

#### Item 8: Executive Director's Report – William L. Harp, MD

##### ***USMLE Step III Examination Applications***

Dr. Leming moved to table this item and that it be considered at the December 13, 2002 Executive Committee meeting.

##### ***Chiropractic Continuing Education***

Dr. Russ moved to refer this issue to the Credentials Committee for discussion and to bring its recommendation back to the full Board. The motion was seconded and carried unanimously.

##### ***Laser Hair Removal***

Dr. Leming moved to table this item and that it be considered at the December 13, 2002 Executive Committee meeting.

##### ***USMLE Clinical Skills Examination***

Dr. Leming moved to table this item and that it be considered at the December 13, 2002 Executive Committee meeting.

##### ***Laptop Project Update***

Dr. Harp stated the board is to acquire six laptops to proceed with the project as a pilot with Informal Conference Committees, rather than the full board. Due to the exigencies of the circumstances involved with procurement of the laptops, Dr. Beaver and Dr. Harp made the decision to proceed as a pilot project.

Dr. Russ moved that the full Board ratify the laptop project as modified by Dr. Beaver and Dr. Harp. The motion was seconded. With next year's budget the remaining laptops can be purchased. The motion carried unanimously.

##### ***Revenue and Expenditures as of August 30, 2002***

Contained in the agenda packet was a revenue and expenditures summary for July 2002 through August 30, 2002.



### ***Posting of Minutes on the Web***

Effective July 1, 2002 Section 2.2-3707.2 of the Code of Virginia requires executive branch entities to post their public meeting minutes on the Internet.

### ***New Travel Regulations***

A copy of the new travel regulations was distributed to the board members.

### ***CME for Board Activities***

No action was taken on this item.

### ***Department of Professional and Occupational Regulation Reports***

The Department of Professional and Occupational Regulation is studying whether estheticians and electrologists should be licensed.

### ***HJR 122 – Study on the Prevalence of Methylphenidate and Amphetamine Prescriptions***

A draft report on the study of the prevalence of methylphenidate and amphetamine prescriptions is contained in the agenda packet for informational purposes.

### ***FSMB Call for Resolutions***

Resolutions for consideration at the Federation's April 12, 2003 House of Delegates annual business meeting in Chicago are requested to be forwarded to the Federation by February 3, 2003.

### ***FSMB/OIG Project on Medical Errors***

An informational letter from the Federation of State Medical Boards is contained in the agenda packet. The Office of the Inspector General has proposed to work with the Federation and member medical boards to explore a role for medical boards in reducing medical errors based on their unique access to information contained in complaints and other information reported to the board pertaining to quality of care.

### ***FSMB Workshops on Office-Based Opioid Addiction Treatment***

The Federation will be conducted two workshops to review the Drug Abuse Treatment Act and the new role state medical boards will play in regulating office-based opioid addiction treatment. The first workshop will be in January in Washington, DC and the second about six weeks later in Las Vegas.

## ***Center for Personalized Education for Physicians & Institute for Physician Evaluation***

The contract between FSMB and the Center for Personalized Education for Physicians expired June 30, 2002. The Federation set up their own Institute for Physician Evaluation in Philadelphia, PA and Dallas, TX.

## ***FSMB Credentials Verification Service***

An informational memorandum from the Federation reference the FSMB Credentials Verification Service was contained in the agenda packet.

## ***Biennial Statistics***

Contained in the agenda packet for informational purposes was a draft of the Board of Medicine's biennial report for 2000 to 2002.

## ***Continuing Education Statistics***

A total of 1,587 CE letters have been mailed; 354 six-month extensions have been granted; 865 have met the CE requirements; and seven exemptions have been granted.

## ***Public Citizen Press Release and Rankings***

*Public Citizen* has created their own website ([www.citizen.org](http://www.citizen.org)) on disciplined physicians.

## **Item 9: Licensing Report – Ola Powers**

For informational purposes the licensing report was contained in the agenda packet.

## **Item 10: Discipline Report – Karen Perrine**

An informational copy of the board action report was contained in the agenda packet.

Ms. Perrine stated that since January the board has closed 1,167 cases; held 59 informal conferences and 17 formal hearings and entered 30 pre-hearing consent orders. Twenty-three continuances have been granted. There was one withdrawal of a petition for reinstatement and one request for venue. There are 20 cases to be scheduled for an IFC, eight of which are profile cases. Nine cases are to be scheduled for a formal hearing. The total number of open cases for the board is 1,344 of which 715 are in the investigation stage.

Dr. Russ moved that the guidelines that were established by Mr. Nebiker last spring be monitored by this board at its regular meetings and that it be presented in a graphic form. The motion was seconded and carried unanimously.

Dr. Leming moved that the Virginia Board of Medicine submit a request to the Secretariat that the maximum employment level (MEL) for the Department of Health Professions be increased to allow it to accomplish appropriate protection of the public. The motion was seconded. Ms. Comstock was concerned about the wording of "appropriate protection of the public" in Dr. Leming's motion. Ms. Comstock stated to use the words "more efficiently." Mr. Nebiker stated to use the words "sufficient to meet the standards of case processing." Dr. Leming accepted the amended language. The motion carried unanimously.

Dr. Leming moved that licensees of the board who have a disciplinary matter that comes before the board regarding profile noncompliance who are offered and who enter into a consent order imposing a censure and completion of their profile as the essence of the consent order with the board, that Dr. Harp, as the executive director, is authorized to enter the order on behalf of the board in those cases. The motion was seconded and carried unanimously.

#### Item 11: Practitioner Information Project Update – Kate Nosbisch

Mr. Nebiker stated that 35% of the licenses have not furnished their emergency contact information.

Contained in the agenda packet is the practitioner information project report. As of October 9, 2002, 97% of the licensees have completed their profiles.

Ms. Nosbisch stated that since the August 2<sup>nd</sup> Executive Committee meeting 50 courtesy letters to licensees with missing paid claim information or inaccurate hospital affiliations that have been brought to the Board's attention have been sent out. Out of the 50 letters sent, 32 licensees have updated their information, 10 are still within 30 days, and 8 did not comply and an initial investigation has been initiated and a case opened.

Ms. Nosbisch asked the board to set a drop-dead date for the notification letter that is being mailed out on November 18, 2002 reference Senate Bill 59 and for those who have not completed their emergency contact information the drop-dead date is also December 31, 2002.

Dr. Jordan moved that the drop-dead date be December 31, 2002. The motion was seconded and carried unanimously.

Dr. Leming moved that the 1 to 2% who are randomly audited for the continuing medical education audit also be audited for the profiling system. The motion was seconded and carried unanimously. Dr. Walker suggested that this information be published in the Medical Society of Virginia's newsletter.

#### Item 12: Meeting Dates for 2003

Contained in the agenda packet were the meeting dates for 2003.

## **Other Business**

### Next Regularly Scheduled Board Meeting

The Board of Medicine will meet on February 6-8, 2003 at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia.

### Review of Cases Recommended for Closure

The Board members proceeded to review cases recommended for closure.

### Adjournment

With no further business to discuss, the meeting of the Board of Medicine was adjourned.

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Harry C. Beaver  
President

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William L. Harp, MD  
Executive Director

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Deborah A. Ordiway  
Recording Secretary